IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 40 OF 2005

1. Smt. Sangeeta Peplo Gaude, r/o Kansar Waddo, Usgao, Ponda Taluka, Goa,

2. Shri Sadanand Kesulo Parkar, r/o Ghodegal, Usgao, Ponda Taluka, Goa,

3. Smt. Ratnamala Sakharam Dessai, r/o Siddeshwar Nagar, Tisk, Usgao, Ponda Taluka, Goa,

4. Shri Ramnath Ganesh Dangi, residing near PDA Market, Tisk, Usagao, Ponda, Goa,

5. Shri Ratnakar Govind Parab, r/o near PDA Market, Tisk, Usgao, Ponda, Goa, and

6. Smt. Kishori Mahadeo Gaude, r/o Palwada, Usgao, Ponda, Goa. ... Petitioners

Versus

1. Shri Tulshidas Bablo Gad, r/o House No.1512, Barazan, Usgao, Ponda Taluka, Goa,

2. Village Panchayat of Usgao-Ganjem, through its Secretary, Usgao, Ponda, Taluka, Goa,

3. The Additional Director
of Panchayats- II, Government
of Goa, Junta House,
Panaji, Goa, and

4. The Block Development
Officer, Ponda, Goa. ... Respondents.

Mr. M.S. Sonak, advocate for the petitioners.

Mr. A. F. Diniz, advocate for respondent no.1.

Ms. Winnie Coutinho, Government Advocate for respondent nos.3 & 4.

CORAM : A.P. LAVANDE, J.

DATE : 4th February, 2005.

ORAL JUDGMENT

Rule. Mr. Diniz waives notice on behalf of respondent no.1 and Ms. Coutinho, Government Advocate waives notice on behalf of respondent nos. 3 and 4. Respondent no.2 is a formal party. By consent heard forthwith.

2. Heard learned counsel for the parties.

3. By this petition, the petitioners, who are Members of the Usgao-Ganjem Panchayat, take exception to Order dated 28th January, 2005, passed by the Additional Director of Panchayats- II, in Panch ayat Petition No. 5/2005. In the meeting held on 25th January, 2005, a `No Confidence Motion' was passed against respondent no.1, who was the Deputy Sarpanch, as well as Mrs. Manik Dhananjay Naik Shirodkar, the Sarpanch of the said Village Panchayat. This Resolution

was challenged by filing Panchayat Petition before the Additional Director of Panchayat. On 28th January, 2005, the Director of Panchayats passed the following Order:-

> " Heard learned Adv. Shri Francisco Tavora for the Petitioner. The status quo to be maintained by the Respondents till next date of hearing as regards to Resolution dated 25.1.2005. Fixed for hearing on 23.02.2005 at 3.00 p.m. Issue notice to both the parties.
>
> Records and Proceeding may be called."

4. Mr. Sonak, learned counsel appearing for the petitioners, submitted that the impugned Order passed by respondent no.3, is patently without jurisdiction. According to the learned counsel for the petitioners, the meeting for electing the Sarpanch and Deputy Sarpanch of the said Panchayat has been already fixed on 9th February, 2005, by the Director of Panchayats. By the impugned Order, the respondent no.3 has virtually stayed the election of the Sarpanch and Deputy Sarpanch, which is scheduled on 9th February, 2005. When called upon to support the Order, Ms. Coutinho, learned Government Advocate, fairly conceded that she is not in a position to support the impugned Order. Mr. Diniz, learned counsel appearing for respondent no.1 submitted that no fault could be found with the impugned Order and a direction can be given to the respondent no.3 to decide the

Panchayat Petition within a fixed time. The learned counsel further submitted that the impugned Order is only an interim order and, therefore, the petition is not maintainable.

5. I have considered the submissions made by the learned counsel for the parties. I fail to understand as to how the respondent no.3 could have passed a status quo Order in an election petition when the Director of Panchayats had fixed the election of Sarpanch and Deputy Sarpanch on 9th February, 2005. In my view, the impugned Order is patently without jurisdiction and, as such, although it is an interim Order , interference by this Court is called for.

6. In my view, respondent no.3 has erred in exercising jurisdiction while passing the impugned Order virtually staying the election of the Sarpanch and Deputy Sarpanch on 9th February, 2005. In my opinion, the impugned Order deserves to be set aside at this stage.

7. In the result, therefore, the petition is allowed, the impugned Order dated 28th January, 2005, passed by respondent no.3 is quashed and set aside. However, it is made clear that the election of Sarpanch and Deputy Sarpanch which is scheduled on 9th February, 2005, will be subject to the result of the Panchayat Petition NO. 5/2005. Respondent no.3 is directed to dispose of the Election Petition NO.5/2005 after hearing all the parties thereto, within a period of four

weeks from today. Ms. Coutinho, learned Government Advocate states that respondent no.3 is present in the Court. Respondent no.3 to comply with the Order passed by this Court. Parties to this petition to appear before the respondent no.3 on 7th February, 2005, at 3 p.m. The petition stands disposed of in the aforesaid terms.

A. P. LAVANDE, J.

mc.